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CITY OF SANTA MONICA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION
and MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC 616804

**DECLARATION OF KAHN SCOLNICK IN
SUPPORT OF DEFENDANT'S REPLY IN
SUPPORT OF ITS MOTION TO STRIKE
OR, IN THE ALTERNATIVE, TO TAX
COSTS**

HEARING:

Date: June 25, 2019
Time: 9:30 a.m.
Dept: 44

Action Filed: April 12, 2016
Trial Date: August 1, 2018

Assigned for all purposes through judgment to
Hon. Yvette M. Palazuelos

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EXHIBIT K

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, AUGUST 6, 2018
P.M. SESSION

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REPORTED BY: LORA J. JOHNSON, CSR 10119
RPR, CRR, RMR, CCRR #202
OFFICIAL REPORTER PRO TEMPORE

1 APPEARANCES: (CONTINUED)

2
3 FOR PLAINTIFFS (CONTINUED):

4 LAW OFFICE OF ROBERT RUBIN

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11 BY: MICHELE L. MARYOTT, ESQ.

12 KAHN A. SCOLNICK, ESQ.

13 MARCELLUS McRAE, ESQ.

14 MICHAEL LOZA, JR., ESQ.

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I N D E X
MONDAY, AUGUST 6, 2018; P.M. SESSION

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1 CASE NUMBER: BC616804
2 CASE NAME: PICO NEIGHBORHOOD ASSOCIATION
3 VS. CITY OF SANTA MONICA
4 LOS ANGELES, CALIFORNIA MONDAY, AUGUST 6, 2018
5 DEPARTMENT NO. 28 HON. YVETTE M. PALAZUELOS
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: LORA JOHNSON, CSR NO. 10119
8 TIME: 1:33 P.M.
9

10 THE COURT: Pico Neighborhood Association
11 versus City of Santa Monica, BC616804.

12 Good afternoon.

13 (Counsel respond.)

14 THE COURT: Okay. Let's continue with our
15 witness.

16 MR. SCOLNICK: May we raise one quick issue
17 before we start?

18 THE COURT: Okay.

19 MR. SCOLNICK: We received more designations
20 this morning from plaintiffs.

21 THE COURT: Okay.

22 MR. SCOLNICK: We assume, again, it's too
23 late. So I just want to clarify that with the Court.

24 THE COURT: Okay. Why are you doing this so
25 late?

26 MR. SHENKMAN: I don't believe that's true.

27 MR. SCOLNICK: Pam O'Connor, day one.

28 MR. SHENKMAN: Oh, this is the -- she was

1 Q Okay.

2 THE COURT: Before we go any farther, it's
3 4 o'clock, so we need to adjourn for today. But Neli
4 is going to tell us when we're returning tomorrow.

5 THE CLERK: Tomorrow we can do 9:30,
6 your Honor.

7 THE COURT: Okay. 9:30 tomorrow. 9:30, sir.
8 All right. See you then.

9 THE WITNESS: Thank you.

10 MR. SHENKMAN: Your Honor, I think we're
11 supposed to identify our witnesses, right?

12 THE COURT: Yes.

13 MR. SHENKMAN: So Dr. Kousser, and if there's
14 time, Oscar de la Torre.

15 MR. SCOLNICK: Before we finish, I truly am
16 sorry I have to raise this again, your Honor, but it's
17 the designations. The designation I talked about
18 before lunch, Pamela O'Connor, Day 1, is different. We
19 get a corrected one today. It's different.

20 THE COURT: Use the older one.

21 MR. SCOLNICK: We already -- we already
22 responded to that.

23 THE COURT: Okay.

24 MR. SHENKMAN: I don't think the first day of
25 Pamela O'Connor is really an issue. She walked out a
26 couple minutes --

27 MR. SCOLNICK: We got -- we got it today, so
28 if it's too late, we don't respond to it, right?

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE
4

5 PICO NEIGHBORHOOD ASSOCIATION,)
6 ET AL.,)
7)
8 PLAINTIFFS,)
9)
10 VS.) CASE NO. BC616804
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12 CITY OF SANTA MONICA, ET AL.,)
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14 DEFENDANTS.)
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11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 TRIAL
13 TUESDAY, AUGUST 7, 2018
14 A.M. SESSION

15 APPEARANCES:

16 FOR PLAINTIFFS:

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26 (CONTINUED)

27 PAGES 694 TO 782

28 REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807
OFFICIAL REPORTER

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APPEARANCES:
(CONTINUED)

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FOR DEFENDANT CITY OF	GIBSON DUNN
SANTA MONICA:	BY: MARCELLUS MC RAE, ESQ.
	TIAUNIA HENRY, ESQ.
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I N D E X

8/7/18, A.M. SESSION

PLAINTIFFS' WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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E X H I B I T S

NUMBER	FOR IDENTIFICATION	IN EVIDENCE
105	755	757
152	744	
268	743	743
272	750	757
275	757	765
278	761	765
281	769	775
284	775	
298-1	719	728
298-2	722	728
308	718	728
309	763	765
310	770	775

1 CASE NUMBER: BC616804
2 CASE NAME: PICO VS SANTA MONICA
3 LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 7, 2018
4 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS
5 REPORTER: RHONA S. REDDIX, CSR 10807
6 TIME: A.M. SESSION
7 APPEARANCES: (SEE TITLE PAGE.)
8

9 THE COURT: Pico Neighborhood Association versus
10 City of Santa Monica, BC616804.

11 Good morning. Counsel, will you make your
12 appearances.

13 MR. PARRIS: R. Rex Parris on behalf of the
14 plaintiffs, Your Honor.

15 MR. SHENKMAN: Good morning, Your Honor.
16 Kevin Shenkman, also on behalf of plaintiffs.

17 MR. GRIMES: Good morning, Your Honor.
18 Milton Grimes on behalf of plaintiff.

19 MR. RUBIN: Good morning, Your Honor.
20 Robert Rubin on behalf of the plaintiffs.

21 THE COURT: Thank you.

22 MR. MCRAE: Good morning, Your Honor.
23 Marcellus Mc Rae, Gibson Dunn & Crutcher, appearing on
24 behalf of Defendant City of Santa Monica.

25 MS. MOSHELL: Marissa Moshell, Gibson Dunn &
26 Crutcher, appearing on behalf of Defendant City of
27 Santa Monica.

28 THE COURT: Thank you.

1 Q And did the Court find racially polarized
2 voting in that case?

3 A It did.

4 Q Do you -- is it your opinion that two --
5 well, do you believe that the 2008 City Council election
6 for Santa Monica exhibits racially polarized voting?

7 A Yes, it does.

8 Q And just to wrap up, 2008, the -- who are
9 the top four choices of non-Hispanic Whites?

10 A Shriver, Bloom, Genser, and Katz.

11 Q And all those candidates, how did they do?

12 A They all won.

13 Q Thank you.

14 MR. SHENKMAN: I'm trying to be courteous.

15 THE COURT: Yes. Let's take our lunch break now.
16 I'll see you at 1:30.

17 MR. MCRAE: Thank you, Your Honor.

18 Your Honor, do you want us to take photos
19 at the end of the day? Or whenever the Court wants.

20 THE CLERK: If you can do it in one minute, you
21 can do it now.

22 MR. MCRAE: It's not going anywhere. We can do it
23 at the end of the day.

24 Thank you. Have a nice lunch.

25
26 (Noon recess was taken until
27 1:30 p.m.)

28 (THE NEXT PAGE IS 783.)

1 APPEARANCES: (CONTINUED)

2 FOR PLAINTIFFS (CONTINUED):

3 LAW OFFICE OF ROBERT RUBIN

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I N D E X
TUESDAY, AUGUST 7, 2018; P.M. SESSION

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NUMBER	FOR I.D.	IN EVD.
127	855	876
127-24	855	
-33	857	
-36	858	
-37	858	
-38	858	
-39	860	
-40	860	
-41	854	
-42	854	
-62	870	
127		855
268		835
269	816	823
270-2	822	
270		834
271	820	823
273	826	834
274	820	823
276	826	834

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I N D E X
TUESDAY, AUGUST 7, 2018; P.M. SESSION

EXHIBITS

NUMBER	FOR I.D.	IN EVD.
277	820	823
278	817	
279	828	834
280	821	823
282	829	834
283	821	823
284		803
285	829	834
286	823	823
287	803	814
288	829	834
289	822	823
290	814	815
291	830	834
299	853	876

1 CASE NUMBER: BC616804
2 CASE NAME: PICO NEIGHBORHOOD ASSOCIATION
3 VS. CITY OF SANTA MONICA
4 LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 7, 2018
5 DEPARTMENT NO. 28 HON. YVETTE M. PALAZUELOS
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: LORA JOHNSON, CSR NO. 10119
8 TIME: 1:33 P.M.
9

10 THE COURT: Pico Neighborhood Association
11 versus City of Santa Monica, BC616804.

12 Good afternoon.

13 (Counsel respond.)

14 THE COURT: Okay. Let's continue with
15 Dr. Kousser.

16 MR. McRAE: Your Honor, I have a few things to
17 report back to the Court --

18 THE COURT: Okay.

19 MR. McRAE: -- per this morning, the request.

20 One thing is that we have placed a call into
21 Mr. Vazquez's counsel. We have not heard
22 telephonically back from him. We have given his name
23 and number to plaintiff's counsel so that they can
24 contact him directly, so we facilitated the
25 communication on both ends, and obviously at some point
26 one of us will report back as to what the status of
27 that is.

28 Your Honor, with respect to the

1 and 127 and then let the Court and the court staff --

2 THE COURT: 127, yes, is received.

3 (Exhibit 127 was received into
4 evidence.)

5 THE COURT: What's the other one?

6 MR. SHENKMAN: 299, your Honor.

7 THE COURT: 299, Kousser 1982 report. Yes,
8 that's received.

9 (Exhibit 299 was received into
10 evidence.)

11 MR. SHENKMAN: Thank you, your Honor.

12 THE COURT: Okay. Thank you.

13 Tomorrow, what time, Neli?

14 THE CLERK: 9:30, your Honor.

15 THE COURT: Okay. 9:30 again tomorrow.

16 MR. McRAE: Until 4:00, your Honor?

17 THE COURT: Is tomorrow early, or is that
18 Thursday?

19 THE CLERK: Tomorrow is the 8th?

20 MR. McRAE: Yes.

21 THE CLERK: 4 o'clock.

22 THE COURT: Full day tomorrow.

23 MR. McRAE: Thank you, your Honor.

24 THE COURT: Thank you. You may step down.

25 THE WITNESS: Thank you, your Honor.

26 (The proceedings were adjourned at
27 4:04 p.m.)

28 (The next page number is 877.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE
4

5 PICO NEIGHBORHOOD ASSOCIATION,)
6 ET AL.,)
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8 PLAINIFFS,)
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10 VS.) CASE NO. BC616804
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12 CITY OF SANTA MONICA, ET AL.,)
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10 REPORTER'S TRANSCRIPT OF PROCEEDINGS
11 TRIAL
12 WEDNESDAY, AUGUST 8, 2018
13 A.M. SESSION
14

15 APPEARANCES:

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25 (CONTINUED)

26 PAGES 877 TO 976

27 REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807
28 OFFICIAL REPORTER

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APPEARANCES:
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I N D E X

8/8/18, A.M. SESSION				
PLAINTIFFS' WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
DR. J. MORGAN KOUSSER	879			
	(CONT)			

E X H I B I T S

NUMBER	FOR IDENTIFICATION	IN EVIDENCE
65	952	
66	952	
67	952	952

1 CASE NUMBER: BC616804
2 CASE NAME: PICO VS SANTA MONICA
3 LOS ANGELES, CALIFORNIA WEDNESDAY, AUGUST 8, 2018
4 DEPARTMENT 28 HON. YVETTE M. PALAZUELOS
5 REPORTER: RHONA S. REDDIX, CSR 10807
6 TIME: A.M. SESSION
7 APPEARANCES: (SEE TITLE PAGE.)
8
9

10 -o0o-

11 THE COURT: Pico Neighborhood Association versus
12 City of Santa Monica, BC616804.

13 Good morning.

14
15 (Responses.)
16

17 THE COURT: Counsel, make your appearances.

18 MR. PARRIS: R. Rex Parris on behalf of the
19 plaintiffs, Your Honor.

20 MR. SHENKMAN: Good morning, Your Honor.
21 Kevin Shenkman on behalf of plaintiffs.

22 MR. RUBIN: Robert Rubin on behalf of plaintiffs.
23 Good morning, Your Honor.

24 MS. ALARCON: Good morning. Andrea Alarcon on
25 behalf of plaintiffs.

26 MR. MCRAE: Marcellus McRae, Gibson, Dunn, and
27 Crutcher, appearing on behalf of the City of
28 Santa Monica, the Defendant.

1 what are the factors enunciated --

2 THE COURT: Well, he said there were five or six,
3 and he named one, historical background, and then he has
4 kind of some sub groups under that. So we haven't
5 gotten through the factors yet. But I'm sure an
6 historian can identify the factors, so I'm going to
7 overrule the objection.

8 Why don't we do this when we come back,
9 okay? So come back at 1:30.

10

11 (Noon recess was taken until
12 1:30 p.m.)

13 (THE NEXT PAGE IS 977.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE
PICO NEIGHBORHOOD ASSOCIATION,)
ET AL,)
)
PLAINTIFFS,)
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vs.) NO. BC616804
)
CITY OF SANTA MONICA, ET AL.,)
)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, AUGUST 8, 2018
P.M. SESSION

APPEARANCES:

FOR PLAINTIFFS:

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(APPEARANCES CONTINUED)
PAGES 977 TO 1028, INCL.

REPORTED BY: LORA J. JOHNSON, CSR 10119
RPR, CRR, RMR, CCRR #202
OFFICIAL REPORTER PRO TEMPORE

1 APPEARANCES: (CONTINUED)

2 FOR PLAINTIFFS (CONTINUED):

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7 BY: MARCELLUS McRAE, ESQ.

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I N D E X

WEDNESDAY, AUGUST 8, 2018; P.M. SESSION

INDEX OF WITNESSES

PAGE

J. MORGAN KOUSSER, CALLED BY THE PLAINTIFF

DIRECT EXAMINATION (RESUMED) BY MR. SHENKMAN 979

EXHIBITS

NUMBER	FOR I.D.	IN EVD.
5	1013	1015
12	1020	
28	999	1015
29	1001	1015
31	996	1016
37	1007	1016
65		994
66		994
125-1047	1022	
266	998	1016
293	1014	1016

1 CASE NUMBER: BC616804
2 CASE NAME: PICO NEIGHBORHOOD ASSOCIATION
3 VS. CITY OF SANTA MONICA
4 LOS ANGELES, CALIFORNIA WEDNESDAY, AUGUST 8, 2018
5 DEPARTMENT NO. 28 HON. YVETTE M. PALAZUELOS
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: LORA JOHNSON, CSR NO. 10119
8 TIME: 1:33 P.M.
9

10 THE COURT: Pico Neighborhood Association
11 versus City of Santa Monica, BC616804.

12 Good afternoon.

13 (Counsel respond.)

14 THE COURT: You may be seated.

15 Okay. Plaintiffs, did you have an opportunity
16 to read the brief concerning Holbrook statement.

17 MR. PARRIS: I did read the brief, your Honor.

18 THE COURT: Okay.

19 MR. PARRIS: And I think we're -- we did an
20 opposition.

21 Are you printing it out now? Are they
22 printing out the opposition?

23 (Counsel confer.)

24 MR. PARRIS: We're finishing up the opposition
25 now. It should be here in a bit. I can respond to it,
26 though, if you want me to.

27 THE COURT: Well, why don't we wait until --
28 let's continue with this witness, and then we can

1 MR. SHENKMAN: So perhaps it makes sense to
2 have Mr. Duron at 10:30 tomorrow, and then we'll bring
3 Mr. Kousser back.

4 THE COURT: 10:30 Duron, and then resume with
5 him for an hour.

6 MR. SCOLNICK: And what about the briefing on
7 the Sanchez issue, are we going to get the opposition?

8 THE COURT: I'm assuming they have that.

9 MR. PARRIS: We have it.

10 THE COURT: You may step down. 10:30, yes.

11 MR. McRAE: Your Honor, we need to clean up
12 our table, apparently. So is that okay, or do you want
13 us to wait?

14 THE COURT: You can clean up. You have five
15 minutes or so.

16 MS. ALARCON: Your Honor, we also have the
17 revised exhibits with the Dr. Kousser tables that we
18 were...

19 THE COURT: You can give them to the clerk.

20 (The proceedings were adjourned at
21 2:56 p.m.)

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23 (The next page number is 1029.)
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PROOF OF SERVICE

I, Veronica Guerrero, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On **June 18, 2019**, I served the following:

**DECLARATION OF KAHN SCOLNICK IN SUPPORT OF DEFENDANT'S REPLY
IN SUPPORT OF ITS MOTION TO STRIKE OR, IN THE ALTERNATIVE, TO TAX
COSTS**

on the interested parties in this action by causing the service delivery of the above document as follows:

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Robert Parris
Jonathan Douglass
PARRIS LAW FIRM
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Lancaster, California 93534
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- ☒ **BY PERSONAL SERVICE:** I placed a true copy of the above-titled document in a sealed envelope addressed to R. Rex Parris and gave the same to a messenger for personal delivery before 5:00 p.m. on the above-mentioned date.

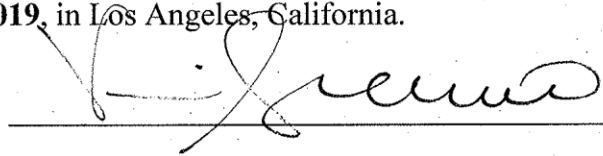
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- ☒ **BY OVERNIGHT DELIVERY:** On the above-mentioned date, I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses shown above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier with delivery fees paid or provided for.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed on **June 18, 2019**, in Los Angeles, California.

3
4 A handwritten signature in black ink, appearing to read 'Veronica Guerrero', is written over a horizontal line.

Veronica Guerrero